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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants	:	HEIMAN, Mark L., et al.	)
Serial No.	:	10/568,467	) Group Art Unit: 1646
Filing Date	:	February 14, 2006	) Examiner: E.B. O'Hara, Ph.D.
For	:	ANTI-GHRELIN ANTIBODIES	)
Docket No.	:	X-16339	) Confirmation No. 7932
Customer No.	:	25885	)

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the communication from the Examiner, i.e., Restriction Requirement, dated October 18, 2006, the due date for which is up to and including November 18, 2006, Applicants submit the following remarks in connection with the above-identified application.

REMARKS

Claims 41-51 are in the application, and are subject to a Restriction Requirement. Examination of this application in view of the remarks presented below is respectfully requested.

Restriction Requirement

The Examiner has required restriction between the following two groups of inventions:

I. Group I, claims 41-47, drawn to antibodies, classified in class 530, subclass 388.1;

II. Group II, claims 48-51, drawn to a method of treatment with the antibodies of Group I, classified in class 514, subclass 2;

The basis for the Restriction Requirement is that the foregoing inventions are "distinct" from one another.

Applicants respectfully traverse the Restriction Requirement on the grounds that there is no basis under the Patent Statutes or rules for a Restriction Requirement based solely on inventions being described as "distinct." The statute, 35 U.S.C. §121, only provides for the Commissioner to require an application to be restricted to one of a number of inventions, "[i]f two or more independent and distinct inventions are claimed in one application…." Emphasis added. The rule, 37 C.F.R. §1.141, only provides that "[t]wo or more independent and distinct inventions may not be claimed in one national application …." Emphasis added. In the instant application, the Examiner has only alleged that the inventions are "distinct," and has not also explained why the inventions are "independent." Thus, as no explanation has been provided as to why the inventions of Groups I-IV are both independent and distinct from one another, Applicants respectfully submit that the Restriction Requirement does not meet the requirements of the statute and rule for requiring restriction between these inventions.

Applicants note that the Manual of Patent Examining Procedure merely provides guidelines for examiners in the Patent Office, and that it does not replace, and is subservient to, applicable statutes, Rules of Practice, and prior decisions. *Ex parte Schwarze*, 151 USPQ 426, 427 (BPAI 1966).

In view of the foregoing, Applicants respectfully traverse the Restriction Requirement, and request reconsideration and withdrawal thereof.

However, so as to be fully responsive to the Restriction Requirement, Applicants hereby provisionally elect, with traverse, the invention of Group I, claims 41-47.

Applicants note the Examiner's comments that upon a finding of allowability of a product claim, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claim will be rejoined in accordance with the provisions of MPEP § 821.04. Applicants note that present method claims 48-51 depend directly or indirectly from elected product claims 46 and 41, and are therefore eligible for rejoinder upon a finding of allowability of the latter.

If the Examiner has any questions, or would like to discuss any matter in connection with the above-identified application, she is invited to contact the undersigned by telephone at (317) 433-4983.

Respectfully submitted,

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